IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVISION APPLICATION NO.25 OF 2002

1. Shri Lamartinhe Noronha,
   bachelor, son of Paulo
   Nicolau Noronha,
   aged 65 years, resident of
   Assolna,Salcete,Goa(deceased);

2. Shri Justino Filipe de Noronha,
   son of Paulo Nicolau Noronha,
   aged 61 years, resident of
   Assolna;

3. Smt. Alba Maria de Ceu De Souza
   Noronha e Sa, widow,
   daughter of Paulo Nicolau
   Noronha, major, resident of
   Biku Building,
   Top Floor, Room No.49,
   Prabhadevi,
   Dadar, Bombay;

4. Smt.Eugenia Maria Magdalena
   De Souza Noronha e Rangel,
   major, married, daughter of
   Paulo Nicolau Noronha,
   resident of Siolim, Marna,
   Bardez, Goa;

5. Shri Leopoldo Paulo Gil de Sa,
   bachelor, son of Smt. Alba Maria do
   Ceu de Souza Noronha e Sa
   (and late Shri Pedro Macario Sa),
   resident of Biku Building,
   top floor, R.N.48,
   Prabhadevi, Dadar,
   Bombay -25;

6. Miss Maria Dorina Xavita de Sa,
   major, daughter of Smt.Alba Maria
   do Ceu de Sousa Noronha e Sa
   (and late Shri Pedro Macario Sa),
   resident of Biku Building,
   top floor, R.No.48,
   Prabhadevi, Dadar,
   Bombay -25;

7. Shri Anacleto Rangel,(now deceased)
   through his Legal Representatives
   on record.....**PETITIONERS.**

VERSUS

1. Shri Jesus Maria Jose Noronha

alias Zito Noronha, married,
son of Paulo Nicolau Noronha,
aged 62 years, resident of
Babsoro, Velim,Salcete,Goa;

2. Smt. Felizberta Eliza Maximiana
Miranda Almeida e Noronha,
married, aged 51 years,
wife of Jesus Maria Jose Noronha,
resident of Babsoro, Velim,
Salcete, Goa (Now deceased)
L.R. on record as Respondent
No.1;

3. Shri Foku Naique,
son of late Sagun Naique,
resident of Xir de Bali,Goa;

4. Smt. Premavati Dinu Naik,
major of age, housewife,
wife of Foku Naik alias
Dinu Xegun Naik,
resident of Xir de Bali, Goa;

5. Guilermina Vaz e Coelho,
daughter of late Noemia Souza
Noronha e Vaz;

6. Maximo Coelho, both no.5 and 6
residing at Bldg. 135,II/2
MPT Colony Headland Sada Goa;

7. Shri Caetano Bartolomeu Vaz
alias Cibi, son of late Noemia
de Souza Noronha e Vas (late
Hermes Z.I. Vas) from Assolna
married, resident of Axon
Business Systems, P.O.Box
6404,Abu Dabi, U.A.E.;

8. Smt. Joana Almeida Vas,
major, married, wife of Caetano
Bartolomeu Vaz resident of
Axon Business Systems,
P.O. Box, 6404,Abu Dabi,U.A.E.;

9. Shri Nelson Vas,
son of late Smt. Noemia de Souza
Noronha e Vas (late Hermes Z.I.Vas
from Assolna bachelo, major, resident
of Assolna, Bairro Primeiro,
Salcete,Goa (deceased)
through L.Rs. on record as
Respondents no.7,8,10,12 and 15;

10. Shri Neville Vas,

son of late Smt.Noemia de Souza Noronha e Vas (and late Hermes Z.I. Vas from Assolna), married, major, resident of Abu Dhabi, c/o Gift Palace Stationery, P.O. Box 3516,AbuDhabi,U.A.E.;

11. Smt.Judith Cruz e Vas, married, major, wife of Neville Vas, resident of Abu Dhabi, c/o Gift Palace Stationery, P.O. Box 3516, Abu Dhabi,U.A.E.;

12. Smt.Gracie Vas e Gomes;

13. Santano Gomes, both no.12 and 13 residing at Mestabhat, Opp. Model High School, Margao,Salcete,Goa **...RESPONDENTS.**

Shri Mario B. D'Costa and Shri J.A. Lobo, Advocates, for the Petitioners.

Shri M.S. Sonak, Advocate for the Respondents No.3 and 4.

Shri Anthony Pereira, Advocate for the Respondents No.1, 5, 6, 7, 8, 10, 11, 12 and 13, not present.

CORAM : A.S. AGUIAR,J.

DATED : MARCH 1, 2002.

ORAL ORDER

Heard the learned Advocates.

2. The Order impugned in this Civil Revision Application is the Order dated 6th December, 2001 passed by the Civil Judge, Junior Division at Quepem allowing the additional Written Statement of Defendants No.3 and 4 to be

taken on record and overruling the objections of the Petitioners herein, i.e. the Plaintiffs in the Suit.

3. The said Order is impugned on the ground that the Application for taking the additional Written Statement of Defendants No.3 and 4 on record is barred by the principles of **res judicata**, as an earlier application for taking the additional Written Statement of Defendants No.3 and 4 was rejected by the said Civil Judge, Junior Division, by Order dated 23rd April, 2001.

4. The cause for filing additional Written Statement has arisen consequent to the amendment of the prayer clause by the Plaintiffs, by adding prayer (a)(i) which is as follows:

> "for a declaration that the Plaintiffs and Defendant Nos.1 and 2 are the co-owners of the suit property."

5. By the said Order dated 23-4-2001, the learned Civil Judge, Junior Division rejected the additional Written Statement on the ground that the averments in the said additional Written Statement went beyond the scope of the amended prayer. However, by the said Order, the Defendants No.3 and 4 were given liberty to file an additional Written Statement provided the averments pertained to the amendment carried out by the Plaintiffs to the prayer clause and also to the valuation of the property for the purpose of relief of declaration and nothing more. Accordingly, the Defendants No.3 and 4, i.e. the Petitioners herein, filed their additional Written Statement dated 16-10-2001 setting out averments relevant to the amendment to the prayer clauses. The learned Judge in his impugned Order has appreciated that the said additional Written Statement has confined itself to the amended prayer clause in the plaint. Further it may be noted that the averments/pleas in the Written Statement pertaining to the valuation and limitation are permissible and can be considered and decided by the Court even if the same are not specifically taken up in the Written Statement.

6. In the light of the above, it cannot be said that the impugned Order is barred by the

principles of res judicata due to the earlier Order dated 23rd April, 2001. Hence Civil Revision Application rejected and disposed of. Interim orders stand vacated.

(A.S. AGUIAR)
JUDGE.

ac.